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Supreme Court of Iowa.

ANNIE MORROW, RESPONDENT, v. JAMES WOOD, APPELLANT.

A parent in sending his child to school surrenders to the teacher such control over the child as is necessary for the proper government and discipline of the school. But where the parent desires that the child shall omit a part of the regular course of study and so directs him, the teacher has no paramount authority to enforce the study of the omitted part, and corporal punishment of the child for disobedience under such circumstances is an unlawful assault.

The fact that the school was a public one, in which the studies were prescribed by statute, *held* not to vary the general rule as to the right of a parent to direct the omission of part of the prescribed studies.

THIS was an action by Annie Morrow, the respondent in error, against Wood, the appellant, for malicious prosecution. The plaintiff was a teacher in a public school, and the defendant, Wood, was the father of one of the pupils, a boy about twelve years of age. Defendant's child on coming to the school was directed by plaintiff to take up certain studies including geography. The boy, by command of his father, refused to study geography, and for this disobedience was punished by the teacher. The father thereupon commenced a prosecution against the teacher for assault and battery. After some continuances the prosecutor failed to appear before the justice and the case was discontinued. The teacher then brought this action and obtained a verdict for \$500, whereupon the defendant took a writ of error to this court.

Barber & Clementson, for appellant.

G. C. Hazelton and *O. B. Thomas*, for appellee.

The opinion of the court was delivered by

COLE, J.—It is claimed by the counsel for the defendant that the court below should have granted the motion for a nonsuit, because all the evidence showed that the criminal prosecution against the plaintiff for an alleged assault and battery committed by her upon the infant son of the defendant was never tried upon the merits, but was discontinued on her motion and against the consent of the complainant in that action. It is insisted that before an action for malicious prosecution can be maintained it must appear that the criminal prosecution has been determined in favor of the party prosecuted, by a trial and acquittal, or the prosecution must have been discontinued against his consent.

We shall spend no time in the consideration of this point in the case, for the reason that we are fully agreed upon a question of law involved, which is fundamental and underlies the cause, and is entirely decisive of every other question arising upon the record. And as this is a question of some practical importance as affecting the duties and powers of teachers in our public schools we deem it best to decide it in the present case. The facts upon which this question of law arises as established on the trial, are these in brief.

About the 18th of November 1872, the plaintiff, a qualified teacher under a contract with the district school board, commenced teaching a district school in Grant county. The defendant, an inhabitant of the district, sent his son, a boy about twelve years of age, to the school. The defendant wished his boy to study orthography, reading, writing, and also wished him to give particular attention to the study of arithmetic, for very satisfactory reasons which he gave on the trial. In addition to these studies the plaintiff at once required the child to also study geography, and took pains to aid him in getting a book for that purpose. The father, on being informed of this, told his boy not to study geography, but to attend to his other studies, and the teacher was promptly and fully advised of this wish of the parent, and also knew that the boy had been forbidden by his parent from taking that study at that time. But, claiming and insisting that she had the right to direct and control the boy in respect to his studies even as against his father's orders, she commanded him to take his geography and get his lesson. And when the boy refused to obey her and did do as he was directed by his father, she resorted to force to compel obedience. All this occurred at the first week of school. The defendant instituted a criminal action before a justice for this assault and battery upon his son, which is the malicious prosecution complained of. If the teacher had no right or authority to chastise the boy upon these facts for obeying his father, this action must fail. And whether or not she had the power to correct him is the question in the case, for it is not pretended that the boy was otherwise disobedient or was guilty of any misconduct, or violated any rule or regulation adopted for the government of the school. The Circuit Court, in considering the relative rights and duties of parent and teacher, among other things told the jury that where a parent sent his child to a district school he surrendered to the teacher such authority over his child as is necessary to the proper

government of the school, the classification and instruction of the pupils including what studies each scholar shall pursue, these studies being such as are required by law or are allowed to be taught in public schools. And the court added in this connection, that a prudent teacher will always pay proper respect to the wishes of the parent in regard to what studies the child should take, but where the difference of view was irreconcilable on the subject, the views of the parent in that particular must yield to those of the teacher, and that the parent by the very act of sending his child to school impliedly undertakes to submit all questions in regard to study to the judgment of the teacher. In our opinion there is a great and fatal error in this part of the charge, particularly when applied to the facts in this case, in asserting or assuming the law to be that upon an irreconcilable difference of views between the parent and teacher as to what studies the child shall pursue, the authority of the teacher is paramount and controlling, and that she had the right to enforce obedience to her commands by corporal punishment. We do not think she had any such right or authority, and we can see no necessity for clothing the teacher with any such arbitrary power. We do not really understand that there is any recognised principle of law, nor do we think there is any rule of morals or social usage, which gives the teacher an absolute right to prescribe and dictate what studies a child shall pursue, regardless of the wishes or views of the parent, and, as incident to this, gives the right to enforce obedience even as against the orders of the parent. From what source does the teacher derive this authority? From what maxim or rule of the law of the land? Ordinarily it will be conceded the law gives the parent the exclusive right to govern and control the conduct of his minor children, and he has the right to enforce obedience to his commands by moderate and reasonable chastisement. And furthermore, it is one of the earliest and most sacred duties taught the child to honor and obey its parents. The situation of the child is truly lamentable if the condition of the law is that he is liable to be punished by the parents for disobeying his orders in regard to his studies, and the teacher may lawfully chastise him for not disobeying his parents in that particular. And yet this was the precise dilemma in which the defendant's boy was placed by the asserted authority on the part of parent and teacher.

Now we can see no reason whatever for denying to the father

the right to direct what studies included in the prescribed course his child shall take. He is as likely to know the health, temperament, aptitude and deficiencies of his child as the teacher, and how long he can send him to school. All these matters ought to be considered in determining the question what particular studies the child should pursue at a given term. And where the parent's wishes were reasonable, as they seem to have been in the present case, and the teacher by regarding them could in no way have been embarrassed, her conduct in not respecting the orders given the boy was unjustifiable. If she had allowed the child to obey the commands of his father, it could not possibly have conflicted with the efficiency or good order or well-being of the school. The parent did not propose to interfere with the gradation or classification of the school, or with any of its rules and regulations further than to assert his right to direct what studies his boy should pursue that winter. And it seems to us a most unreasonable claim on the part of the teacher to say the parent has not that right, and further to insist that she was justified in punishing the child for obeying the orders of his father rather than her own. Whence, again we inquire, did the teacher derive this exclusive and paramount authority over the child, and the right to direct his studies contrary to the wish of his father? It seems to us it is idle to say the parent, by sending his child to school, impliedly clothes the teacher with that power in a case where the parent expressly reserves the right to himself, and refuses to submit to the judgment of the teacher the question as to what studies his boy should pursue. We do not intend to lay down any rule which will interfere with any reasonable regulation adopted for the management and government of the public schools, or which will operate against their efficiency and usefulness. Certain studies are required to be taught in the public schools by statute. The rights of one pupil must be so exercised undoubtedly as not to prejudice the equal rights of others. But the parent has the right to make a reasonable selection from the prescribed studies for his child to pursue, and this cannot possibly conflict with the equal rights of other pupils. In the present case the defendant did not insist that his child should take any study outside of the prescribed course. But, considering that the study of geography was less necessary for his boy at that time than some other branches, he desired him to devote all his time to orthography, reading, writing and arithmetic. The father stated

that he thought these studies were enough for the child to take, and he said he was anxious the boy should obtain a good knowledge of arithmetic in order that he might assist in keeping accounts. He wished to exercise some control over the education of his son ; and it is impossible to say that the choice of studies which he made was unreasonable or inconsistent with the welfare and best interest of his offspring. And how it will result disastrously to the proper discipline, efficiency and well-being of the common schools to concede this paramount right to the parent to make a reasonable choice from the studies in the prescribed course which his child shall pursue is a proposition we cannot understand. The counsel for the plaintiff so insist in their argument, but, as we think, without warrant for the position. It is unreasonable to suppose every scholar who attends school, can or will study all the branches taught in them. From the nature of the case some choice must be made, and some discretion be exercised, as to the studies which the different pupils shall pursue. The parent is quite as likely to make a wise and judicious selection as the teacher. At all events, in case of a difference of opinion between the parent and teacher upon the subject, we see no reason for holding that the views of the teacher must prevail, and that she has the right to compel obedience to her orders by inflicting corporal punishment upon the pupil. The statute gives the school board power to make all needful rules and regulations for the organization, gradation and government of the school, and power to suspend any pupil from the privileges of the school for non-compliance with the rules established by them or by the teacher with their consent ; and it is not proposed to throw any obstacle in the way of the performance of these duties. But these powers and duties can be well fulfilled without denying to the parent all right to control the education of his children.

These views are decisive of this case. Under the circumstances the plaintiff had no right to punish the boy for obedience to the commands of his father in respect to the study of geography. She entirely exceeded any authority which the law gave her, and the assault upon the child was unjustifiable.

For these reasons the judgment of the Circuit Court must be reversed and a new trial ordered.